



DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Jim Poolman
Commissioner of Insurance

May 24, 2007

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Norwalk:

We are now into the second year of the implementation of the Medicare Modernization Act (MMA) of 2003, and there continue to be significant problems causing us grave concern.

As part of the MMA of 2003, the regulation of Medicare Advantage plans (MAP) and the companies marketing them, was given to CMS. This includes the review and approval of companies; the products; the marketing material; changes in availability, premiums, and formularies in the plans; and agent behavior.

The absence of state regulation is a fundamental flaw in the management of these plans. The following examples point out a few essential areas in which the lack of state regulation has resulted in poor consumer protection.

In North Dakota, I have been made aware of a number of significant abuses in the marketing and sale of Medicare Advantage plans. Specific examples include, but are not limited to:

- Pressuring a policyholder to switch their coverage to a MAP without adequately explaining the implications of the change on the benefits provided, premiums payable, or access to services.
- Telling policyholders that they *must* change, and that they must make the decision immediately.
- Seniors signing a registration form at a meeting, and finding themselves enrolled in a MAP.
- Telling Medicare beneficiaries MAPs are free, and failing to adequately explain the total out-of-pocket costs.
- Beneficiaries being called to "review their coverage", and discover later they have been enrolled in a MAP.
- Agents calling seniors and saying, "I'm from Medicare and you need to change your policy."
- Seniors being sent a card that states, "Medicare Supplement insurers have increased their rates up to 30% on Medicare Supplement coverage. Based on this, there is now available a plan to supplement your Medicare coverage...Send in this card to see if you qualify for premium savings from \$200 - \$500 per year."
- Telling a beneficiary "Medicare Advantage is the same as Medicare" or "It is a supplement to Medicare."
- Telling a beneficiary that they *must* remain in a MAP for one year.
- Switching Medicare Advantage policyholders from one plan to another (within the same company) without notifying the policyholder.

Marketing Medicare Advantage plans through private insurance companies has resulted in a large number of confusing choices for the senior consumer. In North Dakota, there are more than 30 Medicare Advantage plans available for sale to Medicare beneficiaries. Companies can change the number and types of plans they market; and can change the benefits, premiums and formularies for the plans they continue to offer. While policyholders are supposed to receive an annual notice of any changes, this is not always happening. In addition, medical providers choose which plans they will accept or not accept, and this can change at any time. All of these changes can be made without the regulatory supervision that is currently in place in the states for all other types of health insurance. The combined impact on North Dakota seniors of the complexity and the companies' ability to change is a level of consumer confusion where some now even wonder if they have any insurance at all.

One of the more disturbing developments is the deterioration of assistance provided by CMS to our Senior Health Insurance Counseling (SHIC) staff. Initially, the regional office of CMS was a resource to assist these counselors with questions that our staff had already researched. Having access to CMS was effective in resolving these types of cases. That support has diminished significantly, with CMS now taking the position that they will help only as a last resort, after repeated attempts to work with the companies that are involved. The result of this change in position, for North Dakota seniors, is an even longer time frame to get an issue resolved. Our staff is repeatedly transferred back and forth among individuals at companies, CMS and the Social Security Administration, repeating the issues over and over...if we are even able to make contact in the first place. This lack of service to the people of North Dakota is unacceptable. North Dakotans deserve better! The support from CMS has deteriorated to the point where we even had a CMS staff person hang up the phone on one of my staff while she was assisting a senior in her office.

Because of funds you provide through the Senior Health Insurance Program grants, our Senior Health Insurance Counseling staff and many others across the state, including scores of dedicated volunteers, continue to work very hard to assist seniors with these difficult and complex choices. Our seniors do not need, nor do they deserve the problems they are currently experiencing regarding their Medicare coverage.

I need your help. The additional benefits introduced by the Medicare Modernization Act of 2003 can help many beneficiaries in North Dakota and across the country. However, we need changes to:

- Streamline administration
- Correct marketing abuses
- Eliminate errors, and
- Return regulation of these health insurance plans to the states.

I look forward to working with you to implement these changes to benefit that valuable segment of our population...our seniors.

Sincerely,



Jim Poolman
Insurance Commissioner

JP:ls

cc: The Honorable Byron Dorgan
The Honorable Kent Conrad
The Honorable Earl Pomeroy